

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 946

Introduced by Assembly Member Salas

February 26, 2009

An act to amend Section 201.3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 946, as amended, Salas. Employment: temporary service employee wages.

Existing law requires that an employee of a temporary services employer, as defined, be paid weekly. Existing law requires that an employee of a temporary services employer be paid at the end of the workday if the employee is assigned to a client of the temporary service employer, as defined, on a day-to-day basis or if the employee is assigned to a client engaged in a trade dispute. Existing law provides that these pay requirements do not apply to an employee of a temporary service employer who is assigned to a client for over 90 consecutive calendar days unless the temporary service employer pays the employee weekly. *A violation of these provisions is punishable as a misdemeanor.*

This bill would ~~make technical, nonsubstantive changes to these provisions~~ *provide that the pay requirements would not apply to an employee of a temporary service employer who is assigned to a client for over 91 consecutive calendar days unless the temporary service employer pays the employee weekly.*

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 201.3 of the Labor Code is amended to
2 read:
3 201.3. (a) For purposes of this section, the following
4 definitions apply:
5 (1) "Temporary services employer" means an employing unit
6 that contracts with clients or customers to supply workers to
7 perform services for the clients or customers and that performs all
8 of the following functions:
9 (A) Negotiates with clients and customers for matters such as
10 the time and place where the services are to be provided, the type
11 of work, the working conditions, and the quality and price of the
12 services.
13 (B) Determines assignments or reassignments of workers, even
14 if workers retain the right to refuse specific assignments.
15 (C) Retains the authority to assign or reassign a worker to
16 another client or customer when the worker is determined to be
17 unacceptable by a specific client or customer.
18 (D) Assigns or reassigns workers to perform services for clients
19 or customers.
20 (E) Sets the rate of pay of workers, whether or not through
21 negotiation.
22 (F) Pays workers from its own account or accounts.
23 (G) Retains the right to hire and terminate workers.
24 (2) "Temporary services employer" does not include any of the
25 following:
26 (A) A bona fide nonprofit organization that provides temporary
27 service employees to clients.
28 (B) A farm labor contractor, as defined in subdivision (b) of
29 Section 1682.

1 (C) A garment manufacturing employer, which, for purposes
2 of this section, has the same meaning as “contractor,” as defined
3 in subdivision (d) of Section 2671.

4 (3) “Employing unit” has the same meaning as defined in
5 Section 135 of the Unemployment Insurance Code.

6 (4) “Client” and “customer” mean the person with whom a
7 temporary services employer has a contractual relationship to
8 provide the services of one or more individuals employed by the
9 temporary services employer.

10 (b) (1) Except as provided in paragraphs (2) to (5), inclusive,
11 if an employee of a temporary services employer is assigned to
12 work for a client, the employee’s wages are due and payable not
13 less frequently than weekly, regardless of when the assignment
14 ends, and wages for work performed during any calendar week
15 shall be due and payable not later than the regular payday of the
16 following calendar week. A temporary services employer shall be
17 deemed to have timely paid wages upon completion of an
18 assignment if wages are paid in compliance with this subdivision.

19 (2) If an employee of a temporary services employer is assigned
20 to work for a client on a day-to-day basis, the employee’s wages
21 are due and payable at the end of each day, regardless of when the
22 assignment ends, if each of the following occurs:

23 (A) The employee reports to or assembles at the office of the
24 temporary services employer or at another location.

25 (B) The employee is dispatched to a client’s worksite each day
26 and returns to or reports to the office of the temporary services
27 employer or another location upon completion of the assignment.

28 (C) The employee’s work is not executive, administrative, or
29 professional, as defined in the wage orders of the Industrial Welfare
30 Commission, and is not clerical.

31 (3) If an employee of a temporary services employer is assigned
32 to work for a client engaged in a trade dispute, the employee’s
33 wages are due and payable at the end of each day, regardless of
34 when the assignment ends.

35 (4) If an employee of a temporary services employer is assigned
36 to work for a client and is discharged by the temporary services
37 employer or leasing employer, the employee’s wages are due and
38 payable as provided in Section 201.

39 (5) If an employee of a temporary services employer is assigned
40 to work for a client and quits his or her employment with the

1 temporary services employer, the employee's wages are due and
2 payable as provided in Section 202.

3 (6) If an employee of a temporary services employer is assigned
4 to work for a client for over ~~90~~ 91 consecutive calendar days, this
5 section shall not apply unless the temporary services employer
6 pays the employee weekly in compliance with paragraph (1) of
7 subdivision (b).

8 (c) A temporary services employer who violates this section
9 shall be subject to the civil penalties provided for in Section 203,
10 and to any other penalties available at law.

11 (d) Nothing in this section shall be interpreted to limit any rights
12 or remedies otherwise available under state or federal law.

13 *SEC. 2. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*